

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

MARIO ABREU,

Petitioner,

v.

ERIC TICE, et al.,

Respondents.

CIVIL ACTION NO. 1:17-CV-01061

(RAMBO, .J.)  
(MEHALCHICK, M.J.)

**REPORT AND RECOMMENDATION**

On June 16, 2017, this Court received and filed a petition for a writ of habeas corpus submitted pursuant to [28 U.S.C. § 2241](#), signed and dated by Petitioner Mario Abreu on June 13, 2017. ([Doc. 1](#)). In his petition, Abreu challenges the August 19, 2013 decision by the Pennsylvania Board of Probation and Parole (“PBPP”) to rescind his parole. ([Doc. 1](#), at 2). At all times relevant to this petition, Abreu has been incarcerated at SCI-Smithfield, located in Huntingdon County, Pennsylvania.

Upon receiving Abreu’s petition, this Court entered an Order on June 22, 2017 directing Abreu to elect whether to have his petition ruled on as filed under [§ 2254](#) and risk forfeiting any claims not presented in the current petition, or withdraw the petition so that he may file one all-inclusive [§ 2254](#) petition within the applicable statute of limitations. ([Doc. 4](#)); *see also Coady v. Vaughn*, 251 F.3d 480, 484–86 (3d Cir. 2001) (holding that a state prisoner must rely on [§ 2254](#) rather than [§ 2241](#) when challenging parole decisions). On July 20, 2017, the Court received and filed a response from Abreu in which he urged the Court to reconsider its prior Order or, in the alternative, stated that he wished to withdraw the current petition rather than

attempting to proceed under § 2254. (Doc. 6, at 3). In an Order filed concurrently with this Report and Recommendation, the Court denies Abreu's motion for reconsideration.

Given Abreu's election to withdraw his petition, it is therefore recommended that the petition (Doc. 1) be **DEEMED WITHDRAWN** and that the Clerk of Court be directed to **CLOSE** this case.

**BY THE COURT:**

**Dated: August 30, 2017**

*s/ Karoline Mehalchick*  

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**KAROLINE MEHALCHICK**  
**United States Magistrate Judge**

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**NOTICE**

**NOTICE IS HEREBY GIVEN** that the undersigned has entered the foregoing **Report and Recommendation** dated **August 30, 2017**. Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

**Dated: August 30, 2017**

*s/ Karoline Mehalchick*  
**KAROLINE MEHALCHICK**  
**United States Magistrate Judge**